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10/583,565	04/05/2007	Hermann Korte	HO-P03260US0	8977
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FULBRIGHT & JAWORSKI, LLP			EXAMINER	
1301 MCKINNEY			PARSLEY, DAVID J	
SUITE 5100				
HOUSTON, TX 77010-3095			ART UNIT	PAPER NUMBER
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NOTIFICATION DATE	DELIVERY MODE			
03/16/2010	ELECTRONIC			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/583,565	<b>Applicant(s)</b> KORTE ET AL.
	<b>Examiner</b> DAVID J. PARSLEY	<b>Art Unit</b> 3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 January 2010.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4 and 6-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4 and 6-23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 19 June 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO/SB/06)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
6) Other: \_\_\_\_\_

**Detailed Action**

*Amendment*

1. This office action is in response to applicant's amendment dated 1-22-10 and this action is a final rejection.

*Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 and 6-23 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 16 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term wall as seen in line 21 of claim 1, in line 21 of claim 16 and in line 22 of claim 20 lacks antecedent basis and therefore it is unclear to which claimed component the wall is referring or if the wall is a new claimed component.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-16 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable

over U.S. Patent No. 2,266,043 to Hutchins in view of U.S. Patent No. 2,398,921 to Cook.

Referring to claims 1 and 16, Hutchins discloses a storage platform, for storing, the storage platform comprising, an adjustable overflow for insertion into a tub-like container comprising, 1, having a base - at item 6 in combination with the flange at the top of tube - 11 as seen in figures 1-2, with a discharge aperture - see figures 1-5, a cylindrical tube portion - at 2, with an axial passageway attached to the base - see figures 1-5, and communicating with the discharge aperture - see figures 1-5, wherein a tubular adjusting member - at 5, is rotatably mounted on or in the tube portion - see figures 1-5, the tube portion being provided with a first adjustment opening - at 3, and the adjusting member being provided with a second adjustment opening - at 7, the adjustment openings being arranged such that in a first turning position of the adjusting member relative to the tube portion the first and second adjustment openings overlap at least partially and define a first overflow level - see figures 1-5, and in a second turning position of the adjusting members, the first and the second adjustment openings do not overlap and close the overflow - see figures 1-5, the overflow for defining a desired level of liquid - see figures 1-5. Hutchins further discloses the cylindrical tube portion - at 2, is configured to insert into a receiving aperture in the tub-like container - at 10 - see figure 2, such that the wall - at 5 or the bottom of 2 or - at 9, adjacent the receiving aperture is located between the top surface of the

base and the adjustment member – see figures 1-5. Hutchins does not disclose two or more additional adjustment openings, the additional adjustment openings being arranged so as to be staggered in the circumferential and axial directions and the first and at least one of the additional openings overlap at least partially to define different overflow levels. Cook does disclose two or more additional adjustment openings – at 31, the additional adjustment openings being arranged so as to be staggered in the circumferential and axial directions – see figures 1-2, and the first – at 29, and at least one of the additional openings – at 31, overlap at least partially to define different overflow levels – see figures 1-3, page 1 column 2 lines 35-55 and page 2 column 1 lines 1-11. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the at least two additional openings of Cook, so as to allow for the flow of liquid through the device to be controlled.

Referring to claim 2, Hutchins as modified by Cook further discloses the tube portion and the adjusting member are open at an end facing away from the base thereby defining a maximum overflow level – see figures 1-5 of Hutchins.

Referring to claim 3, Hutchins as modified by Cook further discloses the adjustment openings are substantially rectangular – see figures 1-5 of Hutchins, a lower edge in each case facing the base and defining an overflow level - see figures 1-5 of Hutchins.

Referring to claim 4, Hutchins as modified by Cook further discloses the tube portion has a first adjustment opening running in the axial direction, and extending from the base to an end of the tube portion distal from the base - see figures 1-5 of Hutchins.

Referring to claim 6, Hutchins as modified by Cook further discloses stop means – at 8, 5', provided for locking different relative turning positions between the adjusting member and the base – see figures 1-5 of Hutchins.

Referring to claim 7, Hutchins as modified by Cook further discloses the base has a flat bearing surface adjacent to the tube portion and running radially - see figures 1-5 of Hutchins.

Referring to claim 8, Hutchins as modified by Cook further discloses the base has two stops to limit a turning angle – see figures 1-5 of Hutchins.

Referring to claim 9, Hutchins as modified by Cook further discloses the discharge aperture is aligned transversely to the cylindrical tube - see figures 1-5 of Hutchins.

Referring to claim 10, Hutchins as modified by Cook further discloses the overflow consists entirely or partially of a material – see figures 1-5 of Hutchins, that can become water-permeable after it has been wet for a certain time – see page 1 column 1 lines 50-55 and page 1 column 2 lines 1-12 of Hutchins.

Referring to claim 11, Hutchins as modified by Cook further discloses a further discharge aperture - at 4 or the top of 2, which is arranged so as to be staggered in the circumferential direction and in particular is disposed opposite the discharge aperture - see figures 1-5 of Hutchins.

Referring to claim 12, Hutchins as modified by Cook further discloses an inspection opening is disposed in the region of the base in an extension of the passageway and communicating therewith – see figures 1-5 Hutchins.

Referring to claim 13, Hutchins as modified by Cook further discloses the inspection opening is sealed with a removable cap - see at 11,12 in figure 2 of Hutchins.

Referring to claim 14, Hutchins as modified by Cook further discloses the base is provided in the region of the passageway with a means for connecting a drainage hose - see at 11,12 in figure 2 of Hutchins.

Referring to claim 15, Hutchins as modified by Cook further discloses at least one adjustment opening and/or the open end of the adjusting member is/are designed in the form of a grating - see at 12 in figure 2 of Hutchins.

Referring to claim 21, Hutchins as modified by Cook further discloses each of the additional adjustment openings – at 31 of Cook, is smaller than the first adjustment opening - at 29 - see figures 1-3 of Cook where the openings - at 31 have a smaller depth in that they are formed in material of smaller thickness than that of the openings - at 29. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the at least two additional openings of Cook, so as to allow for the flow of liquid through the device to be controlled.

Referring to claim 22, Hutchins as modified by Cook further discloses either the tube portion or the adjusting member has a peripheral retaining groove – see proximate 8 in figure 3 of Hutchins and proximate the bottom of 2' in figure 5 of Hutchins, and the corresponding adjusting member or tube portion has an engagement member - bottom surface of 2 or 2', adapted to cooperate with the retaining groove - see figures 3 and 5 of Hutchins.

Referring to claim 23, Hutchins as modified by Cook further discloses the internal diameter of the adjusting member is substantially identical to the external diameter of the cylindrical tube – see at 2 and 5 in figure 3 of Hutchins.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchins as modified by Cook as applied to claim 16 above, and further in view of DE Patent No. 20213719.

Referring to claim 17, Hutchins as modified by Cook does not disclose the storage platform is rectangular and has two mounting members in each case on two parallel narrow sides for hanging them in rack struts each mounting member having an engagement end portion ending freely. The German patent does disclose the storage platform is rectangular and has two mounting members in each case on two parallel narrow sides for hanging them in rack struts each mounting member having an engagement end portion ending freely – see figures 1-14. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins as modified by Cook and add the storage rack with mounting member and struts of the German patent, so as to allow for multiple plants to be supported and watered on the device.

Referring to claim 18, Hutchins as modified by Cook and the German patent further discloses the engagement end portions of the mounting members are in each case disposed in a corner region of the storage platform – see figures 1-14 of the German patent. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins as modified by Cook and the German patent and add the storage rack with mounting member and struts of the German patent, so as to allow for multiple plants to be supported and watered on the device.

Referring to claim 19, Hutchins as modified by Cook and the German patent further discloses an outlet member is disposed on the storage platform - see figures 1-5 of Hutchins, which becomes water permeable after it has been wet for a certain time - see page 1 column 1 lines 50-55 and page 1 column 2 lines 1-15 of Hutchins.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchins in view of Cook and further in view of the German patent.

Referring to claim 20, Hutchins discloses a watering device, having a storage platform, for storing, the storage platform comprising, an adjustable overflow for insertion into a tub-like container comprising, 1, having a base - at item 6 in combination with the flange at the top of tube - 11 as seen in figures 1-2, with a discharge aperture - see figures 1-5, a cylindrical tube portion - at 2, with an axial passageway is attached to the base and communicates with the discharge aperture - see figures 1-5, wherein a tubular adjusting member - at 5, is rotatably mounted on or in the tube portion - see figures -5, the tube portion being provided with a first adjustment opening - at 3, and the adjusting member being provided with a second adjustment opening - at 7, the adjustment openings being arranged such that in a first turning position of the adjusting member relative to the tube portion the first and second adjustment openings overlap at least partially and define a first overflow level - see figures 1-5, and in a second turning position of the adjusting members, the first and the second adjustment openings do not overlap and close the overflow - see figures 1-5, the overflow for defining a desired level of liquid - see figures 1-5. Hutchins further discloses the cylindrical tube portion - at 2, is configured to insert into a receiving aperture in the tub-like container - at 10 - see figure 2, such that the wall - at 5 or the bottom of 2 or - at 9, adjacent the receiving aperture is located between the top surface of the base and the adjustment member - see figures 1-5. Hutchins does not disclose at least two storage platforms arranged in such a way that any liquid draining away via the overflow of each storage platform flows into a storage platform below and adjacent to it. The German patent does disclose at least two storage platforms arranged in such a way that any liquid draining away via the

overflow of each storage platform flows into a storage platform below and adjacent to it – see figures 1-14. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the multiple storage platforms and liquid flowing between the storage platforms of the German patent, so as to allow for multiple plants to be supported and watered on the device. Hutchins does not disclose two or more additional adjustment openings, the additional adjustment openings being arranged so as to be staggered in the circumferential and axial directions and the first and at least one of the additional openings overlap at least partially to define different overflow levels. Cook does disclose two or more additional adjustment openings – at 31, the additional adjustment openings being arranged so as to be staggered in the circumferential and axial directions – see figures 1-2, and the first – at 29, and at least one of the additional openings – at 31, overlap at least partially to define different overflow levels – see figures 1-3, page 1 column 2 lines 35-55 and page 2 column 1 lines 1-11. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the at least two additional openings of Cook, so as to allow for the flow of liquid through the device to be controlled.

*Response to Arguments*

4. Regarding the 35 U.S.C 112 2<sup>nd</sup> paragraph rejections, the term wall as seen in each of independent claims 1, 16 and 20 lacks antecedent basis as detailed above in paragraph 2 of this office action.

Regarding the prior art rejections of claims 1, 16 and 20, applicant has not identified to what claimed component the “wall” belongs and therefore the Hutchins reference US 2266043 discloses the cylindrical tube portion - at 2 received in the tub-like container - see figure 2, with adjacent wall – at 2 or 5 or 9 or 6, adjacent to the receiving aperture in the tub disposed between the top surface of the base – at 6, and the adjustment member – 5 as seen in figure 2.

Regarding claim 4, Hutchins further discloses the tube portion has a first adjustment opening – the central opening of item 2, running in the axial direction, and extending from the base to an end of the tube portion distal from the base - see figures 1-5 of Hutchins.

Regarding claim 6, Hutchins further discloses stop means – at 8, 5', provided for locking different relative turning positions between the adjusting member and the base – see figures 1-5 of Hutchins, where items 8 and 5' provide a stop means to stop axial movement of items 2 and 5 with respect to each other.

Regarding claim 8, Hutchins further discloses the base has two stops to limit a turning angle – see figures 1-5 of Hutchins, where items 5' and 8 provide multiple stopping surfaces to limit motion of items 2 and 5 with respect to each other.

Regarding claim 9, Hutchins further discloses the discharge aperture is aligned transversely to the cylindrical tube - see figures 1-5 of Hutchins where the discharge aperture in the base – at 6, is aligned axially and transversely with the tube – at 2.

Regarding claim 10, Hutchins further discloses the overflow consists entirely or partially of a material – see figures 1-5 of Hutchins, that can become water-permeable after it has been wet for a certain time – see page 1 column 1 lines 50-55 and page 1 column 2 lines 1-12 of Hutchins. Applicant has not specifically defined the “certain time” and the materials cited in

columns 1-2 of Hutchins are capable of becoming water permeable after prolonged exposure to water.

Regarding claims 12-13, Hutchins further discloses an inspection opening is disposed in the region of the base in an extension of the passageway and communicating therewith – see figures 1-5 Hutchins and Hutchins further discloses the inspection opening is sealed with a removable cap - see at 11,12 in figure 2 of Hutchins, where an inspection opening such as at the top of item 11 is sealed via item 12.

Regarding claim 14, Hutchins further discloses the base is provided in the region of the passageway with a means for connecting a drainage hose - see at 11,12 in figure 2 of Hutchins with item 11 being construed as a hose in that it is a tube used to convey liquid.

Referring to claim 15, Hutchins as modified by Cook further discloses at least one adjustment opening and/or the open end of the adjusting member is/are designed in the form of a grating - see at 12 in figure 2 of Hutchins where item 12 is connected to the adjustment member - at 5.

Referring to claim 21, the Cook reference US 2398921 discloses each of the additional adjustment openings – at 31 of Cook, is smaller than the first adjustment opening - at 29 - see figures 1-3 of Cook where the openings - at 31 have a smaller depth in that they are formed in material of smaller thickness than that of the openings - at 29. Further, for item 30 of Cook to be fitted to item 24, item 30 would have to be of smaller thickness than item 24 as seen in figures 1-2 so that when items 24 and 30 are assembled together they form an outer diameter that is consistent along the length of the device. Therefore the openings – at 31 have a smaller depth dimension than the openings of item 31.

Referring to claims 17-19, applicant relies upon the arguments to parent claim 16, therefore see the response to these arguments above in this paragraph of this office action.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/  
Primary Examiner, Art Unit 3643